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15 **UNITED STATES BANKRUPTCY COURT**
16 **FOR THE DISTRICT OF NEVADA**

17 In re:

18 MARC JOHN RANDAZZA,

19 Debtor.

20 Case No.: BK-S-15-14956-abl
21 Chapter 11

22 Date: July 31, 2018
23 Time: 1:30 p.m.

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28 **DEBTOR'S REPLY TO OPPOSITION TO ORDER TO SHOW CAUSE**
WHY STEPHEN HABERFELD AND JAMS, INC. SHOULD NOT BE
COMPELLED TO COMPLY WITH THE ORDER APPROVING
SETTLEMENT AGREEMENT AND/OR HELD IN CONTEMPT AND
SANCTIONED FOR WILLFUL VIOLATIONS OF THE AUTOMATIC STAY

29
30 Debtor, Marc John Randazza (“Mr. Randazza”), respectfully submits his reply (the
31 “Reply”) to the opposition (the “Opposition”) [ECF No. 245] filed by JAMS, Inc. (“JAMS”) and
32 Stephen Haberfeld (the “Arbitrator” and together with JAMS, the “JAMS Parties”) to the *Order*
33 *to Show Cause Why Stephen Haberfeld and JAMS, Inc. Should Not Be Compelled to Comply With*
34 *the Order Approving Settlement Agreement and/or Held in Contempt and Sanctioned for Willful*
35 *Violations of the Automatic Stay* (the “OSC”) [ECF No. 238], which was sought by Mr. Randazza
36 pursuant to his *Motion for Order to Show Cause Why Stephen Haberfeld and JAMS, Inc. Should*
37 *Not Be Compelled to Comply With the Order Approving Settlement Agreement and/or Held in*
38 *Contempt and Sanctioned for Willful Violations of the Automatic Stay* (the “Motion”) [ECF No.

1 236].¹ In support of this Reply, Mr. Randazza respectfully represents as follows:

2 1. As of the time of the filing of this Reply, Mr. Randazza has circulated drafts of
 3 proposed stipulations and orders to resolve the disputes at issue herein with both the JAMS Parties
 4 and the Excelsior Parties, which proposed resolutions he hopes will be agreed to and filed with the
 5 Court prior to the hearing on the OSC. Because such proposed resolutions have not been agreed
 6 to or finalized as of the deadline for submission of this Reply, however, Mr. Randazza is compelled
 7 to file this Reply to ensure that his rights and remedies are fully preserved pending the hearing,
 8 and in the event the parties are unable to resolve this prior to then.

9 2. In their Opposition, and only after asking that Mr. Randazza's Motion and the OSC
 10 be denied, the JAMS Parties also request, apparently in the alternative, and as their third and final
 11 request for relief, that the Court "determin[e] as a matter of Bankruptcy Court jurisdiction that the
 12 IAA be deemed dismissed and vacated and authorizing the Arbitrator and JAMS to close the
 13 Arbitration case without further orders." Opposition, p. 14. Mr. Randazza agrees with this
 14 resolution with the exception that contempt should still be found against the JAMS Parties.

15 3. The JAMS Parties were well aware of the existence of the automatic stay in the
 16 Chapter 11 Case (indeed the JAMS Parties received multiple direct emails from counsel regarding
 17 Mr. Randazza's commencement of his Chapter 11 Case), and their excuse that the Debtor did not
 18 inform them of "his position that the stay continued" is no excuse at all. Indeed, in spite of clearly
 19 knowing of the pendency of Mr. Randazza's bankruptcy and of the automatic stay, and making
 20 absolutely no effort whatsoever to even attempt to contact Mr. Randazza's bankruptcy counsel
 21 upon receiving the Arbitration Dismissal Stipulation as ordered and directed by this Court in its
 22 Settlement Order, the JAMS Parties instead proceeded in violation of the automatic stay and, in
 23 any event, certainly in direct contravention of the Bankruptcy Court's Settlement Order by entering
 24 the Arbitration OSC. This Court's Settlement Order to dismiss the Arbitration and vacate the IAA
 25 was not an "invitation," as the Opposition absurdly labels it, to take those actions as directed by
 26 this Court, but rather a clear direction from the Court, which had exclusive and federal preemptive

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 28 ¹ Unless otherwise indicated, all capitalized terms herein shall have the same meanings as set forth in the Motion.

1 jurisdiction over the Debtor and the disputes at issue, to take such actions without exception. The
 2 Arbitrator's opinions about the propriety of this Court's decisions, including this Court's refusal
 3 to confirm the IAA and/or of this Court's approval of the Settlement Agreement between the
 4 Debtor and the Excelsior Parties, including this Court's approval to direct a vacatur of the IAA
 5 and a dismissal of the Arbitration, are completely irrelevant, yet he still chose to re-interpose
 6 himself in the dispute quite unnecessarily and inappropriately, thereby leaving Mr. Randazza with
 7 little choice but to defend himself and the Settlement Agreement he has already started to perform-
 8 -which settlement is a linchpin in the resolution of his entire Chapter 11 Case--by filing the OSC
 9 Application.

10 4. Accordingly, the Court should find contempt, and, at an absolute minimum, should
 11 also impose the very remedy that the contumacious parties agree to: the Court should issue an
 12 order that the IAA is vacated with prejudice and the Arbitration dismissed with prejudice in its
 13 entirety, with the Arbitrator no longer empowered to take any action. Mr. Randazza requests that
 14 his reasonable attorneys' fees and costs be awarded either in having to bring and maintain these
 15 OSC proceedings under a theory of contempt for the stay violations, or in the alternative, for the
 16 JAMS Parties' clear contravention of the Settlement Agreement as approved and enforced by this
 17 Court's Settlement Order. In this regard, it is noteworthy that even after fully receiving the OSC
 18 paperwork, as well as the Settlement Motion, Settlement Agreement, and Settlement Order, the
 19 JAMS Parties' appear to try and "hedge their bets" because they withdraw the Arbitration OSC,
 20 yet do so without prejudice, thereby leaving open the possibility that they may still take action in
 21 the future in violation of the stay and/or in contravention of this Court's Settlement Order as
 22 approving the Settlement Agreement. In other words, even accepting the JAMS Parties' argument
 23 that they were blissfully unaware of anything at the time the Arbitrator entered the Arbitration
 24 OSC, such excuse obviously has no validity once they fully had received the OSC paperwork and
 25 related items, yet they still leave open the possibility that this Arbitrator may still act. The Court
 26 should not allow such gamesmanship and flouting of its very clear and direct order by an irrelevant
 27 Arbitrator whose decision this Court refused to confirm, and indeed whose decision was
 28 effectively gutted by this Court's subsequent rulings on various dispositive motions filing in the

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1 adversary proceeding with the Excelsior Parties.

2 5. As a result, Mr. Randazza requests that the Court order, once and for all, that the
3 IAA entered in the Arbitration be vacated in full with prejudice, and that the Arbitration be
4 dismissed with prejudice, with the Arbitrator restrained and enjoined from taking any and all other
5 actions in the Arbitration whatsoever. Mr. Randazza further requests that he be awarded his
6 reasonable attorney's fees and costs incurred in bringing and maintaining these OSC proceedings
7 through to final decision.

8 Dated: July 26, 2018.

9 By: /s/ Matthew C. Zirzow
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